

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Robert Picciotti d/b/a Seville Associates
Seville Associates**

FILE NO.: UST 2013-180-03479

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named parties (“Respondents”) have violated certain statutes and/or administrative regulations under the DEM's jurisdiction.

B. Administrative History

The DEM issued informal written notices dated 7 March 2011, 24 May 2011, 8 June 2011 and 20 September 2013 by certified mail to Robert Picciotti for the violations. The 7 March 2011 notice was also sent by regular mail. The notices advised Mr. Picciotti of the actions that must be taken to correct the violations. The 20 September 2013 notice was returned unclaimed. Mr. Picciotti has failed to respond to or comply with the notices.

C. Facts

- (1) The property is located at 229 First Avenue, Tax Assessor’s Map 6A, Lot 118, Unit 8 in the city of Woonsocket, Rhode Island (the “Property”). The Property includes a former mill building and underground storage tank (the “Facility”).
- (2) Seville Associates owns the Property.
- (3) Seville Associates was originally formed as a Rhode Island General Partnership. Robert Picciotti is the only surviving partner of the partnership.
- (4) One underground storage tank (“UST” or “tank”) is located on the Property, which was used for storage of petroleum product and which is subject to the DEM’s *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the “UST Regulations”).
- (5) The Facility is registered with the DEM and is identified as UST Facility No. 03479.

- (6) The UST is registered with the DEM as follows:

UST ID No.	Capacity	Product Stored
1	20000 gallons	Heating Oil No. 6

- (7) On 1 March 2011, 18 November 2013 and 27 March 2014 the DEM inspected the Property. The inspections revealed that the mill building was destroyed by fire and that the UST was still in place and no longer in use.
- (8) The Respondents have not paid the required UST annual registration fees to the DEM for calendar years 2005 through 2014.
- (9) As of the date of this Notice of Violation (“NOV”), the UST remains in place on the Property in an abandoned state.
- (10) As of the date of the NOV, the DEM has not given permission to the Respondents to allow the UST to remain in place on the Property in an abandoned state.

D. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **DEM’s UST Regulations, Rule 6.10** – requiring the owner to pay annual UST registration fees to the DEM.
- (2) **DEM’s UST Regulations, Rule 13.02(A)** – prohibiting the abandonment of USTs.
- (3) **DEM’s UST Regulations, Rule 13.05** – requiring the owner to permanently close a UST in accordance with the DEM’s UST Regulations if a UST has been abandoned or removed from operation for more than 180 days without the DEM’s permission.

E. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to:

- (1) **Within 90 days of receipt of this NOV**, submit a permanent closure application to the DEM – Office of Waste Management and complete the removal of the UST in accordance with Section 13.00 of the DEM’s UST Regulations.

- (2) **Within 30 days of the removal of the UST**, remove and properly dispose of any contaminated soil encountered during the tank closure and, within 10 days of the soil disposal, submit documentation of disposal to the DEM in accordance with Section 13 of the DEM's *Oil Pollution Control Regulations*.
- (3) **Within 60 days of receipt of written notification from the DEM to conduct a site investigation of the Property**, retain a qualified consultant to perform the site investigation and submit a Site Investigation Report to the DEM within the time frame specified by the DEM in accordance with Rules 12.08, 12.09 and 12.10 of the DEM's UST Regulations.
- (4) **Within 60 days of receipt of written notification from the DEM to submit a Corrective Action Plan ("CAP")**, retain a qualified consultant to submit a proposed CAP to the DEM in accordance with Rules 12.12 through 12.18 of the DEM's UST Regulations. The CAP shall be implemented in accordance with an order of approval issued by the DEM.

F. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

Seven Thousand Eight Hundred and Seventy Three Dollars (\$7,873)

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 30 days of your receipt of this NOV. Payment shall be in the form of a certified check, cashiers check or money order made payable to the "General Treasury - Water & Air Protection Program Account" and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against the Respondents in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the Director determines that reasonable efforts have been made to comply promptly with this NOV.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F above. All requests for hearing MUST:
 - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
 - (b) Be **RECEIVED** by the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
One Capitol Hill, 2ND Floor
Providence, RI 02903

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
 - (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.
- (2) A copy of each request for hearing must also be forwarded to:

Joseph J. LoBianco, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before the DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).

- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of this NOV is being forwarded to the city of Woonsocket, wherein the Property is located, to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 42-17.1-2 (31), as amended.
- (7) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Joseph J. LoBianco at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section G above.

FOR THE DIRECTOR

David E. Chopy, Chief
DEM Office of Compliance and Inspection

Date: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

Robert Picciotti d/b/a Seville Associates
30 Woodward Road
Narragansett, RI 02882

Seville Associates
c/o Robert Picciotti
30 Woodward Road
Narragansett, RI 02882

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST
 File No.: UST 2013-180-03479
 Respondents: Robert Picciotti d/b/a Seville Associates and Seville Associates

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (2) and C (3) – Abandonment of an underground storage tank	Type I (\$25,000 Max. Penalty)*	Minor	\$6,250	1 violation	\$6,250
SUB-TOTAL					\$6,250

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

ECONOMIC BENEFIT FROM NONCOMPLIANCE		
COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:		
- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR		
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.		
DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT
Interest earned by delaying cost of tank closure	Delayed one time non-depreciable expenditure of \$8,700 (average cost to remove one UST at a typical facility)	\$558
Avoidance of UST registration fees and late fees	Registration Fees: One UST X 10 years @ \$75 per UST Late Fees: One UST X 9 years @ \$35 per UST	\$1,065
SUB-TOTAL		\$1,623

COST RECOVERY
ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.
A review of the record in this matter has revealed that the DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$7,873

PENALTY MATRIX WORKSHEET

CITATION: Abandonment of an Underground Storage Tank
 VIOLATION NO.: D (2) and C (3)

TYPE		
<u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondents abandoned a UST at the property and failed to permanently close the UST in accordance with the DEM's UST regulations.
- (B) **Environmental conditions:** The property is located in a GB groundwater classification zone, which are groundwater resources known or presumed to be unsuitable for drinking water use without treatment. There are no known drinking water supplies proximate to the property. The property is located immediately adjacent to the Blackstone River, with the UST located within 300 feet of the river. The property is located within 300 feet of a recreational park and within 600 feet of a school. Residential structures are located within 100 feet of the UST. The DEM received a report dated 17 August 2007 prepared by Jacques Whitford on behalf of the Respondents. The report stated that the contents of the UST were removed and properly disposed in February and March 2007 and the UST cleaned. The condition of the underlying soil is unknown.
- (C) **Amount of the pollutant:** Unknown.
- (D) **Toxicity or nature of the pollutant:** Petroleum constituents can cause significant surface water, groundwater and/or soil contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and the environment. Petroleum products are toxic to aquatic organisms.
- (E) **Duration of the violation:** Full duration unknown – at least 7 ½ years. The Respondents retained a consultant to clean the UST in February and March 2007.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** The Respondents failed to prevent the noncompliance and failed to mitigate the non-compliance despite receiving letters from the DEM in March 2011, May 2011, June 2011 and September 2013, which required that they do so.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for their failure to comply immediately with the requirements set forth in Rules 13.02(A), 13.05 and 13.06 of the DEM's UST Regulations. The Respondents had complete control of the property and failed to permanently close the UST. Abandonment of a UST is expressly prohibited by the DEM's UST Regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u> </u> X MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$6,250	\$1,250 to \$2,500	\$250 to \$1,250